



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 151] CHANDIGARH, TUESDAY, NOVEMBER 29, 2022 (AGRAHAYANA 08, 1944 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9909-HII(2)-2022/17298.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 75/2017, dated 27.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

UJJAGAR SINGH S/O SHRI KARAM SINGH, R/O VILLAGE HOTTI BARI NAGAL,
POST OFFICE PAROL, TEHSIL & DISTRICT SAS NAGAR, MOHALI, PUNJAB (Workman)

AND

CHAIRMAN, CHANDIGARH KITCHEN GARDENING CO-OPERATIVE SOCIETY LIMITED,
SECTOR 23, CHANDIGARH (Management)

AWARD

1. The workman, Ujjagar Singh, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed by the management M/s Chandigarh Kitchen Gardening Co-operative Society (*hereinafter in short called 'Society'*) w.e.f. 01.01.1999 as Helper. The workman successfully performed his duties with punctuality and honestly. The management was entirely satisfied with his work & conduct. The management has fixed his wages @ ₹ 6,205/- per month after deduction of ESI and PF, which is less than the notified minimum wage rate issued by the Labour Department, Chandigarh. The workman is illiterate and knows only to put his signature in Punjabi. Due to continuous work experience, the management had entrusted him gardening work. The workman also used to do manual work along with other co-workers. All the workmen have been doing their allotted work as per directions and control of the superior officials of the management. The management started harassing and torturing the workmen of the Society due to which the workmen made their majority to fight against the same. But the management was not happy with it and targeted the leading workmen by making false & baseless allegations against them including the workman. The management issued show cause notice to the workman vide Reference No. CKGCS/2016/630 dated 18.01.2017 leveling false allegation that *"you have not observed the working hours of the society, you have not visited the residences for Spray etc"*. The workman submitted his written reply. The workman had visited on every single calling by the management but the management with the malafide intention alleged that the workman did not respond properly. All the workmen including the workman are implicated in inquiry on the basis of false and baseless allegations with a motive to terminate the workmen, who raised voice against the humiliation for legal right

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from the management. The management has started taking action against the workman by using the observation of audit report made against the management as a weapon and the workman had been made soft target though neither he was duty bound to maintain the alleged account of the management nor the workman had committed any irregularity. The newly elected management of the society came into existence in the month of September, 2015. After a gap of one and a half year, they have raised baseless allegation for taking the revenge from the workmen, who were demanding salary as well as PPF share and had started illegally retrenching the services of the employees. Prior to termination of the workman, the management retrenched Smt. Santosh Kumari. As the workman stood for justice to Smt. Santosh Kumari, thus to retaliation and backfire the management issued show cause notice to the workman and thereafter illegally terminated his services. On 12.04.2017 the management had issued termination letter to the workman. The workman requested the management that he is only earner in his family so he may kindly be allowed duty but all in vain. The management made call to police and falsely alleged and case has been registered under Section 107/151 of Cr.P.C. without having fault of the workman. In case, the management was not satisfied with the reply submitted by the workman then it was mandatory on the part of the management to get conducted the regular inquiry against the workman to establish the responsibilities and duties of the workman. In addition to violation of the principles of natural justice, the management had further violated the provisions existing under Section 25-F of the ID Act. The workman had worked continuously for 30 years. Impugned order dated 12.04.2017 terminating the services of the workman, is not sustainable in the eyes of law. The management had intentionally not issued wage slips to the workman and have obtained signatures of the workman on undated blank voucher having affixed revenue stamp. The workman is entitled to 14 days sick leaves with wages, 7 days casual leaves, 15 days earned leaves with wages, annual leaves with wages under the provisions of The Punjab Industrial Establishment National & Festival Holidays and Casual & Sick Leaves Act, 1956 read with Section 79 of the Factories Act, 1948. The management never allowed leave with wages, as per law and had deducted the wages of the leave days. The workman is poor, helpless and almost illiterate. The high prices and unemployment had badly finished his bargaining power. The management has prepared artificial record. The management has concealed the facts from the Government Departments. The workman was punctual and honest towards his duties. The workman is permanent employee and has availed only sanctioned leaves so he has uninterrupted continuous employment with the management as per provisions of Section 25-B of the ID Act. Verbal termination order is illegal, unjustified, malafide and in violation of the provisions of the ID Act. Prayer is made that the termination order of the workman be declared illegal and the workman be reinstated into service with continuity of service, full back wages and all other applicable consequential benefits.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 04.01.2018, wherein preliminary objections are raised on the ground that the management is a cooperative society registered under the Punjab Co-operative Societies Act, 1961 (*hereinafter in short called 'Act'*), as applicable to the Union Territory of Chandigarh so the provisions of the Act made there-under are applicable to its employees. In case, the workman is aggrieved by any of the orders passed by the Society, he can make out a case for a reference under Section 55/56 of the Act. Since the workman has statutory remedy of Reference under Section 55/56 of the Act before the Registrar Cooperative Societies, Chandigarh so the present demand notice is not maintainable before this Court. The services of the workman have been terminated under Clause 29(xi) of the Bye-laws of Society on the ground that his services as Helper, on daily wages, in the Society were no more required as there was not much work in view of the existing strength of the workmen as Helper in the Society. Moreover, the Society is running short of funds and also incurring losses and therefore, the workman being the junior most, his services have been terminated being not required, by giving wages for the month of March 2017, 01.04.2017 to 15.04.2017 and advance wages in lieu of notice period for the period from 16.04.2017 to 15.05.2017. Since the outstanding dues as advanced wages in lieu of the notice have already been paid, the present reference lack merits and the workman has no cause of action after receiving the aforesaid wages.

3. On merits, the averments relating to employment of the workman with the management, entrusting the duties in the gardening of the management, duties of the workman and obeying the directions / doing the work and issuance of show cause notice and filing of reply to show cause notice are admitted being matter of record. It is stated that retrenchment of Smt. Santosh Kumari is in no way related to the impugned order of the workman. The proceedings under Section 107 / 151 Cr. P.C. were initiated as the workman slapped the

Vice-Chairman Shri Tapas Narain Sharma. The security proceedings have nothing to do with the present order of termination being passed. There is no question of conducting any regular inquiry especially in view of the fact that services of the workman have been terminated as no longer required and he was the junior most. The management has not violated any provisions of the ID Act rather the workman has been paid advance wages in lieu of notice period *vide* demand draft No.000997 dated 12.04.2017, as mentioned in the impugned letter of termination dated 12.04.2017. The workman had been paid wages for the period of availing sanctioned leave without any deduction. Remaining averments of the claim statement are denied being wrong. Prayer is made that the claim statement may be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 09.02.2018 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the industrial dispute is not maintainable ? OPM
3. Relief.

6. In evidence, the workman examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. copy of Consumer Price Index Number of Chandigarh Centre for half year ending September, 2016 issued on 29.11.2016 *vide* Mark 'A'; copy of reply dated 27.01.2017 to show cause notice filed by Ujjagar Singh, Helper to the Chairman of the Society *vide* Mark 'B'; copy of termination dated 12.04.2017 issued to the workman by the Chairman of the Society *vide* Mark 'C'. On 22.11.2021 the workman closed his evidence.

7. On the other hand, the management examined MW1 Amarjit Singh, who tendered his affidavit Exhibit 'MW1/A' along with documents i.e. copy of award dated 10.05.2019 passed by Mrs. Anshul Berry, Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh in IDR No.72 of 2013 between Bidhi Singh and Manger, The Chandigarh Co-operative Kitchen Gardening Society Limited *vide* Exhibit 'MW1/A' (Exhibit MW1/A is numbered twice, in order to avoid any ambiguity, the affidavit tendered by MW1 is renumbered as 'MW1/AA'); copy of termination dated 12.04.2017 having affixed copy of postal receipt dated 12.04.2017 accompanied with copy of demand draft No.000997 dated 12.04.2017 for sum of ₹ 18,875/- in favour of Ujjagar Singh *vide* Exhibit 'MW1/B'; copy of DDR No.35 dated 17.04.2017 registered at PS Central, Sector 17, Chandigarh on the complaint of Tapes Sharma, Vice-President of the Society *vide* Exhibit 'MW1/C'. On 27.09.2022 learned representative for the management closed the evidence.

8. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below :—

9. Issue No.2 relating to maintainability of the industrial dispute reference being preliminary is taken up first.

Issue No. 2 :

10. Onus to prove this issue is on the management.

11. The management has taken the objection that the present industrial dispute is not maintainable because this Tribunal has no jurisdiction to entertain and decide the present industrial dispute. Learned representative for the management referred the case law report as **1978 SCC(2) 213 tilted Bangalore Water Supply & Sewerage Board Versus A. Rajappa.**

12. On the other hand, learned representative for the workman has argued that this Industrial Tribunal is competent and vested with the jurisdiction to try and decide the present industrial dispute. The workman may choose to raise the dispute either before the Industrial Tribunal or to seek remedy under the Co-operative Societies Act, 1961 and in the present case the workman has chosen the Industrial Tribunal.

13. In the present case, the workman is seeking to set aside termination order Mark 'C' / Exhibit 'MW1/B' being illegal, having been passed without holding any domestic inquiry and without offer and payment of retrenchment compensation and is seeking reinstatement with continuity of service, full back wages and other consequential benefits.

14. In order to decide the controversy whether the present Industrial Tribunal has jurisdiction to try & decide the present industrial dispute or not, it would be apposite to refer the relevant provisions of the Act :—

"55. Disputes which may be referred to arbitration :—

- (1) *Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises—*
- (a) *among members, past members and persons claiming through members, past members and deceased members; or*
 - (b) *between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
 - (c) *between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or*
 - (d) *between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.*

56(9) Jurisdiction of civil court :—*such a dispute has clearly to be settled by recourse to arbitration under the act and the jurisdiction of the civil courts is, therefore, clearly barred.*

79. Notice necessary in suits :—

No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left.

82. Bar of jurisdiction of courts :—

- (1) *Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of -*
- (a) *the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;*
 - (b) *the removal of a committee;*
 - (c) *any dispute required under section 55 to be referred to the Registrar; and*
 - (d) *any matter concerning the winding up and the dissolution of a co-operative society.*

(2) *While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.*

(3) *Save as provided in this Act. no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever"*

15. In view of the aforesaid provisions of law, the dispute shall be referred to Registrar Co-operative Societies, Union Territory Chandigarh for decision and no Court has jurisdiction to entertain the suit or other proceedings in respect of such dispute. Besides, the jurisdiction of the Civil Court or Revenue Court or Labour Court is barred under Section 82 of the Act.

16. Apart from that before institution of the present industrial dispute the workman has not issued the prior notice under Section 79 of the Act. Since the management does not fall within the definition 2(j) of the ID Act, consequently, this Industrial Tribunal / Labour Court has no jurisdiction to entertain & decide the present industrial dispute. The case law referred by the management titled ***Banglore Water Supply & Sewerage Board Versus A. Rajappa (supra)*** is applicable to the facts of the present case to an extent.

17. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 1 :

18. Onus to prove this issue is the workman.

19. In view of the findings recorded on issue No.2 above, this Court has no jurisdiction and is not competent to adjudicate whether the services of the workman were terminated illegally by the management.

20. In view of judgment of ***Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996 titled as Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009***, once this Tribunal / Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits.

21. However, the workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

22. This issue stands decided accordingly.

Relief :

23. In the view of foregoing finding on the issue No.2 above, this industrial dispute is declined with liberty to the workman to avail the remedy before the appropriate forum under relevant provisions of law. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 27th September, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 21st November, 2022

No. 13/1/9910-HII(2)-2022/17300.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 76/2017, dated 27.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHER SINGH S/O SHRI BHOLA RAM, R/O VILLAGE NADDA, POST OFFICE
NAYAGAON, TEHSIL & DISTRICT SAS NAGAR, PUNJAB (Workman)

AND

CHAIRMAN, CHANDIGARH KITCHEN GARDENING CO-OPERATIVE SOCIETY
LIMITED, SECTOR 23, CHANDIGARH (Management)

AWARD

1. The workman, Sher Singh, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed by the management M/s Chandigarh Kitchen Gardening Co-operative Society (*hereinafter in short called 'Society'*) w.e.f. 01.03.1987 as Helper with Salesman / Supervisor Shri Mata Parshad. The workman successfully performed his duties with punctuality and honestly. The management was entirely satisfied with his work & conduct. The management has fixed his wages @ ₹ 7,300/- per month after deduction of ESI and PF, which is less than the notified minimum wage rate issued by the Labour Department, Chandigarh. The workman is illiterate and knows only to put his signature in Punjabi. Due to continuous work experience, the management had entrusted him gardening work. The workman also used to do manual work along with other co-workers. The management used to entrust the duty to count the number of plants purchased by the management, to verify that the plants mentioned in the bill of purchase has been correctly supplied so that the management could release the payment to the supplier firm. As per settled procedure, the plants were further entrusted to the Manager for its entry in the ledger and thereafter to the salesman to sell the plants at the rate fixed by the management. The duty to maintain the ledger of the plants and to maintain the account of the sale of plants and write the cash book of the society was of the management. The management issued show cause notice to the workman *vide* Reference No.CKGCS/2016/629 dated 20.12.2016 leveling false allegations. The management has not provided the list of items and quantity / rate of items shown in the closing stock on 31.03.2015 for an amount of ₹ 5,15,000/- in the balance sheet. Hence, this head remains unverified. The management with an ill motive to take revenge from the workman for supporting the interests of other employees of the management, who started to protest for their right as admissible under the rules and law, has taken action against the workman by using the observation of audit report made against the management as a weapon and the workman had been made soft target though neither he was duty bound to maintain the alleged account of the management nor the workman had committed any irregularity. The newly elected management of the society has came into existence in September 2015 so the period prior to the same do not relate to it but the management has used the audit report to take revenge from the workman by leveling false allegations "*that you have removed the plants and flowers to the tune of Rs.2,38,500/- + Rs.5,15,000/-totaling Rs.7,53,850/-*". There exists not a single document or eye-witness to the alleged false charges leveled against the workman. After a gap of one and a half year of newly elected management of the society, the management have raised baseless allegation for taking the revenge from the workmen, who were demanding salary as well as PPF share and had started illegally retrenching the services of the employees. Prior to termination of the workman, the management retrenched Smt. Santosh Kumari. As the workman stood for justice to Smt. Santosh Kumari, thus to retaliation and backfire the management

issued show cause notice to the workman and thereafter illegally terminated his services. The allegations leveled in the show cause notice are contrary to the facts on record as the firm has admitted that it has not supplied the above said 20 plants of Kagazi Nimbu and had corrected the bill and no payment on that account has been made by the management to the firm. Further the management is alleging quarrel of the workman with another workman Chowkidar whereas the same worker had never taken up the matter with the management rather the complaint in this regard was made in the police station. The alleged charges are false and fabricated and leveled with the bad intention. The workman submitted the reply dated 30.12.2016 to the show cause notice denying the alleged charges false, baseless and on the ground that the jurisdiction of the workman to perform his duties was in the field. It was not the duty of the workman to maintain ledger, billing, selling the plants or making entry in the ledger. In case the management was not satisfied with the reply submitted by the workman then it is mandatory on the part of the management to get conducted regular inquiry against the workman to establish responsibilities and duties of the workman, if any, charges against the workman. In addition to violation of the principles of natural justice, the management had further violated the Section 25-F of the ID Act. The workman had worked continuously for 30 years. Impugned order dated 08.01.2017 terminating the services of the workman, is not sustainable in the eyes of law. The management had intentionally not issued wage slips to the workman and had obtained signatures of the workman on undated blank voucher having affixed revenue stamp. The workman is entitled to 14 days sick leaves with wages, 7 days casual leaves, 15 days earned leaves with wages, annual leaves with wages under the provisions of The Punjab Industrial Establishment National & Festival Holidays and Casual & Sick Leaves Act, 1956 read with Section 79 of the Factories Act, 1948. The management never allowed leave with wages, as per law and had deducted the wages of the leave days. The workman is poor, helpless and almost illiterate. The high prices and unemployment had badly finished his bargaining power. The management has prepared artificial record. The management has concealed the facts from the Government Departments. The workman was punctual and honest towards his duties. The workman is permanent employee and has availed only sanctioned leaves so he has uninterrupted continuous employment with the management as per provisions of Section 25-B of the ID Act. Verbal termination order is illegal, unjustified, malafide and in violation of the provisions of the ID Act. Prayer is made that the termination order of the workman be declared illegal and the workman be reinstated into service with continuity of service, full back wages and all other applicable consequential benefits.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 04.01.2018, wherein preliminary submissions are made that the workman while serving as Assistant Supervisor / Nursery Supervisor in the Society was served with a show cause notice bearing Reference No.629 dated 20.12.2016 for the misconduct of removing the plants and flowers to the tune of ₹ 2,38,500/- + ₹ 5,15,000/- totaling ₹ 7,53,850/-. A direction was issued to the workman to deposit a sum of ₹ 7,53,850/- + interest @12% P.A. with the Society, within 10 days from the receipt of the show cause notice, failing which the management shall presume that he has nothing to say in his defence and the Society shall take appropriate action against him, as per law. The reply submitted to the show cause notice was considered and was found to be non-convincing and unjustified. The plants / flowers and ancillary material were found to have been received by the workman, which were sent by M/s Aggarwal Plantation, Chandigarh, but these plants and articles were not accounted for in the ledger / books of the Society. These plants and flowers were to the tune of ₹ 2,38,500/-, which were embezzled by the workman received by him during the period 22.04.2014 to 22.09.2015. Para 7 of audit report of the Society for the period from 01.04.2012 to 31.03.2015 indicates that the Society has not provided the list of items and quantity / rate of the items shown closing stock on 31.03.2015 for an amount of ₹ 5,15,000/- in the balance sheet. Hence, this heads remains unverified. The workman was found to have removed the plants / flowers and embezzled the amount to the tune of ₹ 5,15,000/- from the nursery being Incharge as Nursery Supervisor of the Society. Apart from this, the workman was found to have stolen / removed 20 plants of Kagzi Nimbu, as per bill dated 01.04.2016, for which a letter was issued but he did not submit any reply. Stealing of aforesaid 20 plants of Kagzi Nimbu is therefore admitted. The workman misbehaved with the Chairman of the Society on 17.12.2016 and also misbehaved with the office bearer of the management creating indiscipline in the smooth functioning of the Society. The workman was found to have instigated the other workman to join illegal strike, threatening fellow workman.

The workman Mr. Pardeep John, Chowkidar, therefore, made a complaint to the Senior Superintendent of Police, Chandigarh on 08.12.2016 regarding threat to his life and property. Keeping in view the aforesaid conduct, the services of the workman were dispensed with, with immediate effect *vide* letter bearing No.CKGCS/2016 dated 08.01.2017, in view of the embezzlement to the tune of ₹7,53,850/- committed by him. *Vide* above said termination order, demand draft No.000797 dated 08.01.2017 for ₹ 14,952/- on account of his salary for the month of December, January and advance salary in lieu of notice period was sent as per details mentioned therein.

3. On merits, it is pleaded that in view of the experience of the workman, he was assigned the duties of the Assistant Supervisor / Nursery Supervisor in the Society of the management. It was duty of the workman to receive the number of the plants purchased during his duty hours and to ensure that in the Bill of purchase the same have correctly been supplied. The workman was entrusted with the duties to account for the plants received / disposed off, during his services with the management. The workman had the knowledge of the list of items, rate of items and he could not count for the amount shown in the closing stock on 31.03.2015. The relevant para of the audit report was reflected in the show cause notice dated 20.12.2016. In response to the show cause notice, the workman could not prove his innocence and as such, the final order dated 08.01.2017 was passed dispensing the services of the workman. The case of Smt. Santosh Kumari is not in any way connected with the conduct of the workman. The workman threatened his co-workman Shri Pardeep John, Chowkidar and a complaint was lodged on 05.12.2016 by the co-workman regarding threat to his life. While working as Assistant Supervisor the workman was required to maintain ledger relating to receiving / selling of the plants. The workman was served with a show cause notice and after considering his reply, the management took a decision terminating his services in view of his conduct in giving a huge loss to the management. The services of the workman were terminated clearing his outstanding dues as also giving him salary in advance for the notice period. The management has not violated the principles of natural justice. The workman was served with a show cause notice, giving an opportunity to justify his conduct and after considering the same, a detailed speaking order was passed, dispensing the services of the workman, giving salary in advance for the notice period, apart from paying his outstanding dues for the period he has worked. The entitled leave was duly availed by the workman during his period of service with the management. The management has been complying with the mandatory provisions of the ID Act. Remaining averments of the claim statement are denied being wrong. Prayer is made that the claim statement may be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 09.02.2018 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Relief.

6. Thereafter on 10.09.2019 application dated 02.08.2019 for rejection of reference was filed by the management, which was disposed off by the then Presiding Officer *vide* order dated 13.04.2021 and following additional issue was framed :—

1-A Whether the industrial dispute is not maintainable ? OPM

7. In evidence, the workman examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. copy of Consumer Price Index Number of Chandigarh Centre for half year ending September, 2016 issued on 29.11.2016 *vide* Mark 'A' and copy of letter dated 08.01.2017 issued to the workman Sher Singh by the Chairman of the Society whereby the services of the workman were dispensed with *vide* Mark 'B'. On 26.11.2021 the workman closed his evidence.

8. On the other hand, the management examined MW1 Amarjit Singh, who tendered his affidavit Exhibit 'MW1/A' along with documents i.e. copy of show cause notice bearing No.CKGCS/2016/629 dated 20.12.2016 having affixed copy of postal receipt dated 22.12.2016 issued to the workman Sher Singh - Assistant Supervisor / Nursery Supervisor Exhibit 'MW1/1'; copy of letter No.CKGCS/2016 dated 08.01.2017 issued to the workman Sher Singh by the Chairman of the Society whereby the services of the workman were dispense with, with immediate effect *vide* Exhibit 'MW1/2'; copy of Memo No.Coop/Audit/2016/443 dated 27.06.2016 whereby audit report for the period 01.04.2012 to 31.03.2015 was sent to the President / Secretary of the Society by the Senior Auditor Cooperative Societies, U.T. Chandigarh *vide* Exhibit 'MW1/3' and copy of complaint tracking report of Chandigarh Police regarding Ref. No.PW201616169 dated 05.12.2016 moved by the complainant Pardeep Johan, Kitchen Gardening Cooperative Society against Sher Singh, Sonu Ram and Ram Rattan, Kitchen Gardening Society *vide* Exhibit 'MW1/4'. During the course of cross-examination of MW1 also placed on record copy of order bearing endorsement No.513 dated 12.09.2012 issued by the Administrator of the Society regarding posting and transfer of the workers incorporating the name of the workman Sher Singh at serial No.3 Exhibit 'M1'; copy of retail invoice No.R-7307 dated 22.04.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M2'; copy of retail invoice No.R-7391 dated 17.05.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M3'; copy of retail invoice No.R-7392 dated 17.05.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M4'; copy of retail invoice No.R-7462 dated 22.06.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M5'; copy of retail invoice No.R-7591 dated 31.07.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M6'; copy of retail invoice No.R-7603 dated 03.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M7'; copy of retail invoice No.R-7611 dated 08.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M8'; copy of retail invoice No.R-7627 dated 12.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M9'; copy of retail invoice No.R-7636 dated 16.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M10'; copy of retail invoice No.R-7660 dated 21.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M11'; copy of retail invoice No.R-7673 dated 24.08.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M12'; copy of retail invoice No.R-7705 dated 01.09.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M13'; copy of retail invoice No.R-7726 dated 05.09.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M14'; copy of retail invoice No.R-7749 dated 10.09.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M15'; copy of retail invoice No.R-7770 dated 14.09.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M16'; copy of retail invoice No.R-7790 dated 19.05.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M17'; copy of retail invoice No.R-7796 dated 22.09.2015 of M/s Aggarwal Plantation, Panchkula Exhibit 'M18'; copy of invoice No.01331 dated 17.08.2015 of M/s Plantsman's Seeds, Patiala Exhibit 'M19' and copy of invoice No.01331 dated 17.08.2015 of M/s Plantsman's Seeds, Patiala Exhibit 'M19' along with copy of Bill / Cash Memo bearing No.038 dated 26.02.2015 of M/s Shibalya Nursery, Sarangpur, Chandigarh Mark 'R1' On 27.09.2022 learned representative for the management closed the evidence.

9. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below :—

10. Issue No. 2 relating to maintainability of the industrial dispute reference being preliminary is taken up first.

Issue No. 2 :

11. Onus to prove this issue is on the management.

12. The management has taken the objection that the present industrial dispute is not maintainable because this Tribunal has no jurisdiction to entertain and decide the present industrial dispute. Learned representative for the management referred the case law report as ***1978 SCC(2) 213 tilted Bangalore Water Supply & Sewerage Board Versus A. Rajappa.***

13. On the other hand, learned representative for the workman has argued that this Industrial Tribunal is competent and vested with the jurisdiction to try and decide the present industrial dispute. The workman may choose to raise the dispute either before the Industrial Tribunal or to seek remedy under the Co-operative Societies Act, 1961 and in the present case the workman has chosen the Industrial Tribunal.

14. In the present case, the workman is seeking to set aside order whereby the services of the workman were dispensed with Mark 'B' / Exhibit 'MW1/2' being illegal, having been passed without holding any domestic inquiry and without offer and payment of retrenchment compensation and is seeking reinstatement with continuity of service, full back wages and other consequential benefits.

15. In order to decide the controversy whether the present Industrial Tribunal has jurisdiction to try & decide the present industrial dispute or not, it would be apposite to refer the relevant provisions of the Act :—

"55. Disputes which may be referred to arbitration :—

- (1) *Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises—*
- (a) *among members, past members and persons claiming through members, past members and deceased members; or*
 - (b) *between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
 - (c) *between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or*
 - (d) *between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.*

56(9) Jurisdiction of civil court:—*such a dispute has clearly to be settled by recourse to arbitration under the act and the jurisdiction of the civil courts is, therefore, clearly barred.*

79. Notice necessary in suits :—

No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left.

82. Bar of jurisdiction of courts :—

- (1) *Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of -*
- (a) *the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;*
 - (b) *the removal of a committee;*

- (c) any dispute required under section 55 to be referred to the Registrar; and
- (d) any matter concerning the winding up and the dissolution of a co-operative society.
- (2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.
- (3) Save as provided in this Act. no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever"

16. In view of the aforesaid provisions of law, the dispute shall be referred to Registrar Co-operative Societies, Union Territory Chandigarh for decision and no Court has jurisdiction to entertain the suit or other proceedings in respect of such dispute. Besides, the jurisdiction of the Civil Court or Revenue Court or Labour Court is barred under Section 82 of the Act.

17. Apart from that before institution of the present industrial dispute the workman has not issued the prior notice under Section 79 of the Act. Since the management does not fall within the definition 2(j) of the ID Act, consequently, this Industrial Tribunal / Labour Court has no jurisdiction to entertain & decide the present industrial dispute. The case law referred by the management titled **Bangalore Water Supply & Sewerage Board Versus A. Rajappa (supra)** is applicable to the facts of the present case to an extent.

18. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 1 :

19. Onus to prove this issue is the workman.

20. In view of the findings recorded on issue No.2 above, this Court has no jurisdiction and is not competent to adjudicate whether the services of the workman were terminated illegally by the management.

21. In view of judgment of **Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996 titled as Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009**, once this Tribunal / Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits.

22. However, the workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

23. This issue stands decided accordingly.

Relief :

24. In the view of foregoing finding on the issue No.2 above, this industrial dispute is declined with liberty to the workman to avail the remedy before the appropriate forum under relevant provisions of law. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .

The 27th September, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9912-HII(2)-2022/17304.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 88/2020, dated 30.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DABAR SINGH, H.NO. 1017/2, SECTOR 39-B, CHANDIGARH. (Workman)

AND

MANAGING DIRECTOR, CHANDIGARH CHILD & WOMEN DEVELOPMENT CORPORATION LIMITED, TOWN HALL BUILDING, 3RD FLOOR, SECTOR 17-C, CHANDIGARH. (Management)

AWARD

1. The workman, Dabar Singh, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that in the year 2013 Chandigarh Child & Women Development Corporation Limited (*hereinafter in short referred as 'Corporation'*) advertised some posts of Computer Clerk, Mess Supervisor, Cook, Helper Cook and Warden on contract basis. The claimant-workman applied for the post of Cook. The claimant-workman fulfilled the requisite qualification and experience for the post. The claimant-workman was interviewed and after the satisfaction of the Corporation, the claimant-workman was appointed on the post of Cook for the Mess of Snehalaya - VTC, Maloya, Chandigarh *vide* letter No.2123 dated 16.07.2013 for a period of one year on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. Being satisfied by the performance of the claimant-workman his contract was renewed for a further period of one year from 02.08.2014 to 01.08.2015 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time *vide* letter No.2370 dated 02.08.2014. The contract of the claimant-workman was again renewed for a period of one year w.e.f. 05.08.2015 to 04.08.2016 as Cook in the mess of Children Home Snehalaya, Chandigarh on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. The contract of the claimant-workman was reduced from one year to six months and renewed for a period of six months w.e.f. 08.08.2016 to 07.02.2017 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. Having no other choice the claimant-workman accepted the contract on above said terms. The claimant-workman was transferred from Children Home Snehalaya to Aashiana, Sector 15, Chandigarh *vide* endorsement No.5241 dated 01.02.2017. The last extension was expired on 07.02.2017. The claimant-workman asked the reason for non-renewing the contract. The claimant-workman was informed by the management of the Corporation that his services are no more required by the Corporation. There was no complaint against the work & conduct of the claimant-workman. The work & conduct of the claimant-workman was appreciated by his colleagues and superiors. Refusal of work amounts to termination which is retrenchment under Section 2(oo) of the ID Act. The Corporation has violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant was not paid retrenchment compensation at the time of termination. The Corporation has appointed new person in place of the claimant-workman which is in violation of Section 25-H of the ID Act and makes the termination void. Being not conversant of law, the claimant-workman filed a case for his reinstatement in the Central Administrative Tribunal, Chandigarh on the advice of an Advocate. The Hon'ble Tribunal advised the claimant-workman that the Tribunal has no jurisdiction to try the case, therefore, the claimant-workman should approach the appropriate authority for his reinstatement. The claimant-workman then filed a CWP No.8109 of 2017 in the Hon'ble High Court of Punjab & Haryana, Chandigarh. The Advocate, who was appearing on behalf of the claimant-workman, later on advised that a right course is to file the dispute

under the ID Act. Hence, the present reference. The job of Cook is of perennial nature. It is the established law that contractual employees cannot be replaced with another set of contractual employees. The action of management is, therefore, illegal, arbitrary and against the settled principle of law. For his reinstatement, the claimant-workman served upon the management a demand notice dated 12.06.2019. The management neither replied the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention into the matter. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The claimant-workman remained un-employed during the period i.e. from the date of termination till date. Prayer is made that the claimant-workman may be reinstated with full back wages, continuity of service and all attendant benefits and without any change in his service condition.

2. On notice, Shri Harpal Singh - Law Officer appeared on behalf of the Corporation and contested the claim statement by filing written statement dated 08.02.2021 on 09.02.2021, wherein the preliminary objections are taken on the ground that the claimant-workman had not approached the Court with clean hands and suppressed the material facts and record. In fact, the claimant-workman was given contractual appointment *vide* reference No.2108 dated 16.07.2013 for joining as Helper Cook in CCWDC, Children Home, Snehalaya for one year and he joined on 01.08.2013. The contract was further extended on yearly basis from time to time till 07.02.2017. The claimant-workman was not a regular employee of the Corporation. The appointment of the claimant-workman was purely on contractual nature and in this regard the contract has been duly entered into between the claimant-workman and the management of the Corporation. Time and again the workman was given fresh offer on contract basis and for every contract given there was a gap of 1-2 days. Therefore, the claimant-workman is governed by the terms & conditions of the contract and in any case cannot go beyond the said terms and thus, is strictly governed by such time. It has been specifically provided in the contract letters of the claimant-workman that the contract shall automatically deemed to be terminated after the expiry of contractual period. The claim of the claimant-workman for continuity of service and back wages has been rejected by the management of the Corporation on administrative grounds. The management of the Corporation is running Children Home, Snehalaya and Aashiana which are Child Care Institutes and because of shifting of children (girls) of Block 'C', Children Home Snehalaya, some of the employees including the claimant-workman was transferred to Aashiana *vide* office order No.5234-45 dated 01.02.2017. The contract of the claimant-workman had expired and has not been renewed. The management of the Corporation has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children there is a requirement of female Cook and female Helper Cook. Accordingly, 2 female Cooks and 1 female Helper Cook were engaged through the existing service provider. The requirement of the claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there as 2 Cooks and 3 Helper Cooks are working there. Therefore, the removal of the claimant-workman cannot be termed as arbitrary in nature or violation of any law.

3. Further on merits, it is admitted that the office had given the advertisement in Chandigarh Tribune and Dainik Jagran through D.P.R. on 12.06.2013 for filing up various posts in different units of the Corporation. There were 4 posts each of Cook and Helper Cook which were advertised for Snehalaya and the last date for submitting resume along with one passport size photograph, contact number and attested copies of all relevant testimonials was on or before 17.06.2013 up to 2:00 P.M. The claimant-workman was appointed as Cook for the mess of Snehalaya *vide* letter No.2123 dated 16.07.2013 for a period of one year. The claimant-workman was offered fresh contract for further period of one year from 02.08.2014 to 01.08.2015 *vide* letter No. 2370 dated 02.08.2014. The claimant-workman was offered fresh contract for further period of one year from 05.08.2015 to 04.08.2016 *vide* letter No.2412 dated 03.08.2015. The claimant-workman was offered fresh contract for a period of six months from 08.08.2016 to 07.02.2017 *vide* letter No.2273 dated 05.08.2016. The Corporation is simultaneously running Snehalaya - VTC at Maloya and Aashiana at Sector 15, Chandigarh which are Child Care Institutes. It is due to shifting of children (girls) of Block 'C', Children Home, Snehalaya

on administrative grounds, some of the employees including the claimant-workman were transferred to Aashiana vide order No.5234-45 dated 01.02.2017. In fact the management has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as Children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children, there is a requirement of female Helper Cook. Accordingly, 1 Helper Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions which is approved in letter of award of contract dated 30.06.2015. The requirement of claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there and 2 Cooks and 3 Helper Cooks are already working there. There was no need to issue any charge sheet or to hold any inquiry as the services of the claimant-workman was hired on contract basis which is strictly to be adhered by both the parties. The claim of the claimant-workman for continuity of services and back wages had been rejected by the management of the Corporation on administrative grounds. The removal of the workman cannot be termed as arbitrary in nature or violative of Articles 14, 16, & 21 of the Constitution of India. It is admitted that the claimant-workman served the demand notice dated 12.06.2019 served upon the management and the same was defended before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh where no amicable settlement was reached between the parties. Rest of the averments of claim statement are denied as wrong except para No.6 & 8 which are replied being matter of record and prayer is made that the claim of the claimant-workman may be dismissed with cost.

4. The claimant-workman filed rejoinder, wherein the contents of the written statement are denied as wrong except admitted facts of the claim statement and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 13.08.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Relief.

6. In evidence, the claimant-workman Dabar Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 17.08.2022 learned representative for the claimant-workman closed the evidence on behalf of the workman.

7. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who tendered her affidavit Exhibit 'MW1/A' along with attested copies of documents i.e. joining letter dated 01.08.2013 as Cook bearing diary No.733 date 01.08.2013 *vide* Exhibit 'M1'; declaration of the claimant-workman *vide* Exhibit 'M2'; contract letter Ref. No.2123 dated 16.07.2013 *vide* Exhibit 'M3'; contract letter Ref. No.2370 dated 02.08.2014 *vide* Exhibit 'M4'; contract letter reference No.2412 dated 03.08.2015 *vide* Exhibit 'M5'; contract letter Ref. No.2273 dated 05.08.2016 *vide* Exhibit 'M6'; office order relating to transfer of the staff of Children Home, Snehalaya to Aashiana, Sector 15, Chandigarh bearing Ref. No.5234-5245 dated 01.02.2017 *vide* Exhibit 'M7'; original authority letter issued by the Managing Director of the Corporation in favour of Ms. Rajni Gupta - Company Secretary *vide* Exhibit 'M7' (Exhibit 'M7' is numbered twice, therefore, in order to avoid any ambiguity, the authority letter is hereinafter referred as Exhibit 'M8'). It is pertinent to mention here that documents Exhibit 'M1' to M7' are put in cross-examination to AW1 Dabar Singh. On 30.09.2022 learned Law Officer closed the evidence on behalf of the management-Corporation.

8. I have heard the arguments of learned representative for the workman and learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue the claimant-workman Dabar Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto.

11. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who vide her affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement and supported her oral version with documents Exhibit 'M1' to 'M8'.

12. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the claimant-workman applied for the post of Cook as per the advertisement issued by the management-Corporation in newspaper The Tribune (English Edition) and Dainik Jagran (Hindi Edition) both dated 12.06.2013 for various posts including 4 posts of Cook and 4 posts of Helper Cook. The claimant-workman fulfilled the requisite qualification and was appointed as Cook on contractual basis initially for a period of one year vide contract letter dated 16.07.2013 Exhibit 'M3' and the workman gave his joining report as Cook on 01.08.2013 vide Exhibit 'M1'. The contract was further renewed for a period of one year w.e.f. 02.08.2014 to 01.08.2015 vide contract letter Exhibit 'M4'. The contract was again renewed for a period of one year w.e.f. 05.08.2015 to 04.08.2016 vide contract letter Exhibit 'M5' and lastly the contract was renewed for a period of six months w.e.f. 08.08.2016 to 07.02.2017 vide contract letter Exhibit 'M6'. In this regard MW1 Rajni Gupta in her cross-examination admitted as correct that the recruitment of the contractual employee was made after satisfaction of the Corporation. MW1 admitted as correct that the workman was employed for contractual period of one year. MW1 further admitted as correct that the extension of the contract was given after seeing the performance of the concerned employee / workman.

13. Learned Law Officer for the management-Corporation argued that the last contract Exhibit 'M6' was for a period of six months w.e.f. 08.08.2016 to 07.02.2017 and between every contract there is a break period of two days and therefore, there is no continuity of service of the claimant-workman and the claimant-workman has not completed period of 240 days of his service before his termination and thus, the claimant-workman does not fulfil the requirement of Section 25-F of the ID Act. To my opinion the aforesaid arguments advanced by the learned Law Officer is devoid of merits because the concept of 240 days has been evolved with reference to Section 25-F of the ID Act. The practice at the hands of the management of the Corporation to employ the workman repeatedly after a notional break of two days falls within the ambit and scope of unfair labour practice. Every notional break of 1 or 2 days continued under the same employer w.e.f. 01.08.2013 to 07.02.2017. The notional breaks are to be ignored as the service was under the same employer. The management of the Corporation repeatedly employed the claimant-workman after a notional break only with a view to defeat the rights available to the claimant-workman under Section 25-F of the ID Act.

14. Learned Law Officer argued that the claimant-workman has consciously accepted the terms & conditions of the contracts extended from time to time. The period of six months of last contract Exhibit 'M6' expired on 07.02.2017 and the management due to administrative reasons did not offer to extend the contract period so there is no violation of either any provisions of the ID Act or principles of natural justice. To my opinion, the aforesaid argument advanced by learned Law Officer is devoid of merit because in the present case the services of the claimant-workman was not dispensed simply on account of expiry of the contract period but for the reason that the management intended to recruit and in fact recruited female Cook and female Helper Cook at the place of claimant-workman, who is a male, with the explanation that all the children of Child Care Institute Aashiana are girls and from the point of view of their security and safety only female employees are required. In this regard, MW1 in her cross-examination stated that all the girls were transferred from Children Home, Snehalaya to Children Home, Aashiana, Sector 15 Chandigarh, thus, it was administrative decision in view of the fact that all the residents of Snehalaya are female, therefore, to watch their safety and security only female employees will be deputed. MW1 in her cross-examination further stated that before termination the workman was verbally informed that the contract cannot be renewed in view of the fact that all the residents of Children Home, Aashiana are female. In the present case, there is no allegation against the work & conduct of the claimant-workman. In this regard, MW1 in her cross-examination admitted as correct

that when the workman was appointed at that time female children were staying in Children Home, Snehalaya. During service tenure of workman there was no complaint in any manner against his conduct. In any of the contract letters Exhibit 'M3' to Exhibit 'M6' there is no condition to dispense with the services of the workman if only female children are left in the children home. The management has failed to deny the fact that when the claimant-workman was appointed at Snehalaya, Maloya, Chandigarh, at that time both male and female children were staying in the children home. Even otherwise termination of an employee based on caste, colour, race, gender etc. is illegal.

15. In the written statement in para 7 on merits the management-Corporation has pleaded that accordingly one Helper Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions, which is approved in award of letter of contract dated 30.06.2015. The requirement of the workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) and there are two Cooks and three Helper Cooks already working there. The aforesaid plea taken by the management-Corporation is not acceptable because during the period of last contract Exhibit 'M6', the claimant-workman was transferred from Children Home, Snehalaya to Children Home, Aashiana vide office order dated 01.02.2017 / Exhibit 'M7'. It is not the plea of the management-Corporation that there is no requirement of the Cook at Children Home, Aashiana. Rather on account of transfer of girl children from Children Home, Snehalaya to Children Home, Aashiana the strength of the children increased at Children Home, Aashiana. As per the law laid by the *Hon'ble High Court of Punjab & Haryana reported in 2005(7) SLR 626 tilted as Harminder Kaur & Others Versus Union of India & Others* which is applicable to the facts of the present case to an extent, the contract employees cannot be replaced by another contract employee. The contract employee is entitled to continue till regular appointee or by transfer comes to replace him.

16. In view of the discussion made above, the termination of the claimant-workman is illegal and violative to Section 25-F of the ID Act and also amounts to unfair labour practice. Therefore, the claimant-workman is entitled for reinstatement with continuity of service and full back wages and all the consequential benefits thereof.

17. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

18. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.). . .,

The 30th September, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9913-HII(2)-2022/17306.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 89/2020, dated 30.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MAJOR SINGH, VILLAGE THAMPUR, TEHSIL & DISTRICT MOHALI. (Workman)

AND

MANAGING DIRECTOR, CHANDIGARH CHILD & WOMEN DEVELOPMENT CORPORATION LIMITED, TOWN HALL BUILDING, 3RD FLOOR, SECTOR 17-C, CHANDIGARH. (Management)

AWARD

1. The workman, Major Singh, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that in the year 2013 Chandigarh Child & Women Development Corporation Limited (*hereinafter in short referred as 'Corporation'*) advertised some posts of Computer Clerk, Mess Supervisor, Cook, Helper Cook and Warden on contract basis. The claimant-workman applied for the post of Cook. The claimant-workman fulfilled the requisite qualification and experience for the post. The claimant-workman was interviewed and after the satisfaction of the Corporation, the claimant-workman was appointed on the post of Cook for the Mess of Snehalaya - VTC, Maloya, Chandigarh *vide* letter No.2108 dated 16.07.2013 for a period of one year on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. Being satisfied by the performance of the claimant-workman his contract was renewed for a further period of one year from 02.08.2014 to 01.08.2015 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time *vide* letter No. 2376 dated 02.08.2014. The contract of the claimant-workman was again renewed for a period of one year w.e.f. 05.08.2015 to 04.08.2016 as Helper Cook in the mess of Children Home Snehalaya, Chandigarh on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. The contract of the claimant-workman was reduced from one year to six months and renewed for a period of six months w.e.f. 08.08.2016 to 07.02.2017 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. Having no other choice the claimant-workman accepted the contract on above said terms. The claimant-workman was transferred from Children Home Snehalaya to Aashiana, Sector 15 *vide* endorsement No.5243 dated 01.02.2017. The last extension was expired on 07.02.2017. The claimant-workman asked the reason for non-renewing the contract. The claimant-workman was informed by the management of the Corporation that his services are no more required by the Corporation. There was no complaint against the work & conduct of the claimant-workman. The work & conduct of the claimant-workman was appreciated by his colleagues and superiors. Refusal of work amounts to termination which is retrenchment under Section 2(oo) of the ID Act. The Corporation has violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant was not paid retrenchment compensation at the time of termination. The Corporation has appointed new person in place of the claimant-workman which is in violation of Section 25-H of the ID Act and makes the termination void. Being not conversant of law, the claimant-workman filed a case for his reinstatement in the Central Administrative Tribunal, Chandigarh on the advice of an Advocate. The Hon'ble Tribunal advised the claimant-workman that the Tribunal has no jurisdiction to try the case, therefore, the claimant-workman should approach the appropriate authority for his reinstatement. The claimant-workman then filed a CWP No.8109 of 2017 in the Hon'ble High Court of Punjab & Haryana, Chandigarh. The Advocate,

who was appearing on behalf of the claimant-workman, later on advised that a right course is to file the dispute under the ID Act. Hence, the present reference. The job of Cook is of perennial nature. It is the established law that contractual employees cannot be replaced with another set of contractual employees. The action of management is, therefore, illegal, arbitrary and against the settled principle of law. For his reinstatement, the claimant-workman served upon the management a demand notice dated 12.06.2019. The management neither replied the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention into the matter. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The claimant-workman remained un-employed during the period i.e. from the date of termination till date. Prayer is made that the claimant-workman may be reinstated with full back wages, continuity of service and all attendant benefits and without any change in his service condition.

2. On notice, Shri Harpal Singh - Law Officer appeared on behalf of the Corporation and contested the claim statement by filing written statement dated 08.02.2021 on 09.02.2021, wherein the preliminary objections are taken on the ground that the claimant-workman had not approached the Court with clean hands and suppressed the material facts and record. In fact, the claimant-workman was given contractual appointment *vide* reference No.2108 dated 16.07.2013 for joining as Helper Cook in CCWDC, Children Home, Snehalaya for one year and he joined on 01.08.2013. The contract was further extended on yearly basis from time to time till 07.02.2017. The claimant-workman was not a regular employee of the Corporation. The appointment of the claimant-workman was purely on contractual nature and in this regard the contract has been duly entered into between the claimant-workman and the management of the Corporation. Time and again the workman was given fresh offer on contract basis and for every contract given there was a gap of 1-2 days. Therefore, the claimant-workman is governed by the terms & conditions of the contract and in any case cannot go beyond the said terms and thus, is strictly governed by such time. It has been specifically provided in the contract letters of the claimant-workman that the contract shall automatically deemed to be terminated after the expiry of contractual period. The claim of the claimant-workman for continuity of service and back wages has been rejected by the management of the Corporation on administrative grounds. The management of the Corporation is running Children Home, Snehalaya and Aashiana which are Child Care Institutes and because of shifting of children (girls) of Block 'C', Children Home Snehalaya, some of the employees including the claimant-workman was transferred to Aashiana *vide* office order No.5234-45 dated 01.02.2017. The contract of the claimant-workman had expired and has not been renewed. The management of the Corporation has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children there is a requirement of female Cook and female Helper Cook. Accordingly, 2 female Cooks and 1 female Helper Cook were engaged through the existing service provider. The requirement of the claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there as 2 Cooks and 3 Helper Cooks are working there. Therefore, the removal of the claimant-workman cannot be termed as arbitrary in nature or violation of any law.

3. Further on merits, it is admitted that the office had given the advertisement in Chandigarh Tribune and Dainik Jagran through D.P.R. on 12.06.2013 for filing up various posts in different units of the Corporation. There were 4 posts each of Cook and Helper Cook which were advertised for Snehalaya and the last date for submitting resume along with one passport size photograph, contact number and attested copies of all relevant testimonials was on or before 17.06.2013 up to 2:00 P.M. The claimant-workman was appointed as Cook for the mess of Snehalaya *vide* letter No.2108 dated 16.07.2013 for a period of one year. The claimant-workman was offered fresh contract for further period of one year from 02.08.2014 to 01.08.2015 *vide* letter No.2376 dated 02.08.2014. The claimant-workman was offered fresh contract for further period of one year from 05.08.2015 to 04.08.2016 *vide* letter No.2409 dated 03.08.2015. The claimant-workman was offered fresh contract for a period of six months from 08.08.2016 to 07.02.2017 *vide* letter No.2283 dated 05.08.2016.

The Corporation is simultaneously running Snehalaya - VTC at Maloya and Aashiana at Sector 15, Chandigarh which are Child Care Institutes. It is due to shifting of children (girls) of Block 'C', Children Home, Snehalaya on administrative grounds, some of the employees including the claimant-workman were transferred to Aashiana *vide* order No.5234-45 dated 01.02.2017. In fact the management has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as Children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children, there is a requirement of female cook. Accordingly, 1 Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions which is approved in letter of award of contract dated 30.06.2015. The requirement of claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there and 2 Cooks and 3 Helper Cooks are already working there. There was no need to issue any charge sheet or to hold any inquiry as the services of the claimant-workman was hired on contract basis which is strictly to the adhered by both the parties. The claim of the claimant-workman for continuity of services and back wages had been rejected by the management of the Corporation on administrative grounds. The removal of the workman cannot be termed as arbitrary in nature or violative of Articles 14, 16, & 21 of the Constitution of India. It is admitted that the claimant-workman served the demand notice dated 12.06.2019 served upon the management and the same was defended before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh where no amicable settlement was reached between the parties. Rest of the averments of claim statement are denied as wrong except para No.6 & 8 which are replied being matter of record and prayer is made that the claim of the claimant-workman may be dismissed with cost.

4. The claimant-workman filed rejoinder, wherein the contents of the written statement are denied as wrong except admitted facts of the claim statement and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 13.08.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, the claimant-workman Major Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 17.08.2022 learned representative for the claimant-workman closed the evidence on behalf of the workman.

7. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who tendered her affidavit Exhibit 'MW1/A' along with attested copies of documents i.e. joining letter dated 01.08.2013 bearing diary No.735 date 02.08.2013 *vide* Exhibit 'M1'; declaration of the claimant-workman *vide* Exhibit 'M2'; contract letter Ref. No.2108 dated 16.07.2013 *vide* Exhibit 'M3'; contract letter Ref. No.2376 dated 02.08.2014 *vide* Exhibit 'M4'; contract letter reference No.2409 dated 03.08.2015 *vide* Exhibit 'M5'; contract letter Ref. No.2283 dated 05.08.2016 *vide* Exhibit 'M6'; office order relating to transfer of the staff of Children Home, Snehalaya to Aashiana, Sector 15, Chandigarh bearing Ref. No.5234-5245 dated 01.02.2017 *vide* Exhibit 'M7'; original authority letter issued by the Managing Director of the Corporation in favour of Ms. Rajni Gupta - Company Secretary *vide* Exhibit 'M7' (Exhibit 'M7' is numbered twice, therefore, in order to avoid any ambiguity, the authority letter is hereinafter referred as Exhibit 'M8'). It is pertinent to mention here that documents Exhibit 'M1' to M7' are put in cross-examination to AW1 Major Singh. On 30.09.2022 learned Law Officer closed the evidence on behalf of the management-Corporation.

8. I have heard the arguments of learned representative for the workman and learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue the claimant-workman Major Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto.

11. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who *vide* her affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement and supported her oral version with documents Exhibit 'M1' to 'M8'.

12. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the claimant-workman applied for the post of Helper Cook as per the advertisement issued by the management-Corporation in newspaper The Tribune (English Edition) and Dainik Jagran (Hindi Edition) both dated 12.06.2013 for various posts including 4 posts of Cook and 4 posts of Helper Cook. The claimant-workman fulfilled the requisite qualification and was appointed as Helper Cook on contractual basis initially for a period of one year *vide* contract letter Exhibit 'M3'. The contract was further renewed for a period of one year *w.e.f.* 02.08.2014 to 01.08.2015 *vide* contract letter Exhibit 'M4'. The contract was again renewed for a period of one year *w.e.f.* 05.08.2015 to 04.08.2016 *vide* contract letter Exhibit 'M5' and lastly the contract was renewed for a period of six months *w.e.f.* 08.08.2016 to 07.02.2017 *vide* contract letter Exhibit 'M6'. In this regard MW1 Rajni Gupta in her cross-examination admitted as correct that the recruitment of the contractual employee was made after satisfaction of the Corporation. MW1 admitted as correct that the workman was employed for contractual period of one year. MW1 further admitted as correct that the extension of the contract was given after seeing the performance of the concerned employee / workman.

13. Learned Law Officer for the management-Corporation argued that the last contract Exhibit 'M6' was for a period of six months *w.e.f.* 08.08.2016 to 07.02.2017 and between every contract there is a break period of two days and therefore, there is no continuity of service of the claimant-workman and the claimant-workman has not completed period of 240 days of his service before his termination and thus, the claimant-workman does not fulfil the requirement of Section 25-F of the ID Act. To my opinion the aforesaid arguments advanced by the learned Law Officer is devoid of merits because the concept of 240 days has been evolved with reference to Section 25-F of the ID Act. The practice at the hands of the management of the Corporation to employ the workman repeatedly after a notional break of two days falls within the ambit and scope of unfair labour practice. Every notional break of 1 or 2 days continued under the same employer *w.e.f.* 01.08.2013 to 07.02.2017. The notional breaks are to be ignored as the service was under the same employer. The management of the Corporation repeatedly employed the claimant-workman after a notional break only with a view to defeat the rights available to the claimant-workman under Section 25-F of the ID Act.

14. Learned Law Officer argued that the claimant-workman has consciously accepted the terms & conditions of the contracts extended from time to time. The period of six months of last contract Exhibit 'M6' expired on 07.02.2017 and the management due to administrative reasons did not offer to extend the contract period so there is no violation of either any provisions of the ID Act or principles of natural justice. To my opinion, the aforesaid argument advanced by learned Law Officer is devoid of merit because in the present case the services of the claimant-workman was not dispensed simply on account of expiry of the contract period but for the reason that the management intended to recruit and in fact recruited female Cook and female Helper Cook at the place of claimant-workman, who is a male, with the explanation that all the children of Child Care Institute Aashiana are girls and from the point of view of their security and safety only female employees are required. In this regard, MW1 in her cross-examination stated that all the girls were transferred from Children Home, Snehalya to Children Home, Aashiana, Sector 15 Chandigarh, thus, it was administrative decision in view of the fact that all the residents of Snehalya are female, therefore, to watch their safety and security only female employees will be deputed. MW1 in her cross-examination further stated that before termination the workman was verbally informed that the contract cannot be renewed in view of the fact that all the residents of Children Home, Aashiana are female. In the present case, there is no allegation against the work & conduct of the claimant-workman. In this regard, MW1 in her cross-examination admitted as correct

that when the workman was appointed at that time female children were staying in Children Home, Snehalaya. During service tenure of workman there was no complaint in any manner against his conduct. In any of the contract letters Exhibit 'M3' to Exhibit 'M6' there is no condition to dispense with the services of the workman if only female children are left in the children home. The management has failed to deny the fact that when the claimant-workman was appointed at Snehalaya, Maloya, Chandigarh, at that time both male and female children were staying in the children home. Even otherwise termination of an employee based on caste, colour, race, gender etc. is illegal.

15. In the written statement in para 7 on merits the management-Corporation has pleaded that accordingly one Helper Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions, which is approved in award of letter of contract dated 30.06.2015. The requirement of the workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) and there are two Cooks and three Helper Cooks already working there. The aforesaid plea taken by the management-Corporation is not acceptable because during the period of last contract Exhibit 'M6', the claimant-workman was transferred from Children Home, Snehalaya to Children Home, Aashiana vide office order dated 01.02.2017 / Exhibit 'M7'. It is not the plea of the management-Corporation that there is no requirement of the Helper Cook at Children Home, Aashiana. Rather on account of transfer of girl children from Children Home, Snehalaya to Children Home, Aashiana the strength of the children increased at Children Home, Aashiana. As per the law laid by the **Hon'ble High Court of Punjab & Haryana reported in 2005(7) SLR 626 tilted as Harminder Kaur & Others Versus Union of India & Others** which is applicable to the facts of the present case to an extent, the contract employees cannot be replaced by another contract employee. The contract employee is entitled to continue till regular appointee or by transfer comes to replace him.

16. In view of the discussion made above, the termination of the claimant-workman is illegal and violative to Section 25-F of the ID Act and also amounts to unfair labour practice. Therefore, the claimant-workman is entitled for reinstatement with continuity of service and full back wages and all the consequential benefits thereof.

17. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

18. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.). . .,

The 30th September, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9914-HII(2)-2022/17308.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 38/2021, dated 30.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

AMRIT PAL, VILLAGE JAMPUR, PO TIDA, DISTRICT MOHALI. (Workman)

AND

MANAGING DIRECTOR, CHANDIGARH CHILD & WOMEN DEVELOPMENT CORPORATION LIMITED, TOWN HALL BUILDING, 3RD FLOOR, SECTOR 17-C, CHANDIGARH. (Management)

AWARD

1. The workman, Amrit Pal, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that in the year 2013 Chandigarh Child & Women Development Corporation Limited (*hereinafter in short referred as 'Corporation'*) advertised some posts of Computer Clerk, Mess Supervisor, Cook, Helper Cook and Warden on contract basis. The claimant-workman applied for the post of Cook. The claimant-workman fulfilled the requisite qualification and experience for the post. The claimant-workman was interviewed and after the satisfaction of the Corporation, the claimant-workman was appointed on the post of Cook for the Mess of Snehalaya - VTC, Maloya, Chandigarh vide letter No.2367 dated 07.08.2014 for a period of one year w.e.f. 02.08.2014 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time. Being satisfied by the performance of the claimant-workman his contract was renewed for a further period of one year from 05.08.2015 to 04.08.2016 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time vide letter No.2436 dated 03.08.2015. The contract of the claimant-workman was reduced from one year to six months and renewed for a period of six months w.e.f. 08.08.2016 to 07.02.2017 vide letter No.2277 dated 03.08.2016 on minimum wages as fixed by the Deputy Commissioner, U.T. Chandigarh from time to time vide letter No.2277 dated 03.08.2016. Having no other choice the claimant-workman accepted the contract on above said terms. The last extension was expired on 07.02.2017. The claimant-workman asked the reason for non-renewing the contract. The claimant-workman was informed by the management of the Corporation that his services are no more required by the Corporation. There was no complaint against the work & conduct of the claimant-workman. The work & conduct of the claimant-workman was appreciated by his colleagues and superiors. Refusal of work amounts to termination which is retrenchment under Section 2(oo) of the ID Act. The Corporation has violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant was not paid retrenchment compensation at the time of termination. The Corporation has appointed new person in place of the claimant-workman which is in violation of Section 25-H of the ID Act and makes the termination void. Being not conversant of law, the claimant-workman filed a case for his reinstatement in the Central Administrative Tribunal, Chandigarh on the advice of an Advocate. The Hon'ble Tribunal advised the claimant-workman that the Tribunal has no jurisdiction to try the case, therefore, the claimant-workman should approach the appropriate authority for his reinstatement. The claimant-workman then filed a CWP No.8109 of 2017 in the Hon'ble High Court of Punjab & Haryana, Chandigarh. The Advocate, who was appearing on behalf of the claimant-workman, later on advised that a right course is to file the dispute under the ID Act. Hence, the present reference. The job of Cook is of perennial nature. It is the established law that contractual employees cannot be replaced with another set of contractual employees. The action of

management is, therefore, illegal, arbitrary and against the settled principle of law. For his reinstatement, the claimant-workman served upon the management a demand notice dated 12.06.2020. The management neither replied the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention into the matter. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The claimant-workman remained un-employed during the period i.e. from the date of termination till date. Prayer is made that the claimant-workman may be reinstated with full back wages, continuity of service and all attendant benefits and without any change in his service condition.

2. On notice, Shri Harpal Singh - Law Officer appeared on behalf of the Corporation and contested the claim statement by filing written statement dated 04.08.2021 on 09.08.2021, wherein the preliminary objections are taken on the ground that the claimant-workman had not approached the Court with clean hands and suppressed the material facts and record. In fact, the claimant-workman was given contractual appointment vide reference No.2117 dated 16.07.2013 for joining as Cook in CCWDC, Children Home, Snehalaya for one year and he joined on 01.08.2013. The contract was further extended on yearly basis from time to time till 07.02.2017. The claimant-workman was not a regular employee of the Corporation. The appointment of the claimant-workman was purely on contractual nature and in this regard the contract has been duly entered into between the claimant-workman and the management of the Corporation. Time and again the workman was given fresh offer on contract basis and for every contract given there was a gap of 1-2 days. Therefore, the claimant-workman is governed by the terms & conditions of the contract and in any case cannot go beyond the said terms and thus, is strictly governed by such time. It has been specifically provided in the contract letters of the claimant-workman that the contract shall automatically deemed to be terminated after the expiry of contractual period. The claim of the claimant-workman for continuity of service and back wages has been rejected by the management of the Corporation on administrative grounds. The management of the Corporation is running Children Home, Snehalaya and Aashiana which are Child Care Institutes and because of shifting of children (girls) of Block 'C', Children Home Snehalaya, some of the employees including the claimant-workman was transferred to Aashiana vide office order No.5234-45 dated 01.02.2017 the contract of the claimant-workman had expired and has not been renewed. The management of the Corporation has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children there is a requirement of female Cook and female Helper Cook. Accordingly, 2 female Cooks and 1 female Helper Cook were engaged through the existing service provider. The requirement of the claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there as 2 Cooks and 3 Helper Cooks are working there. Therefore, the removal of the claimant-workman cannot be termed as arbitrary in nature or violation of any law.

3. Further on merits, it is admitted that the office had given the advertisement in Chandigarh Tribune and Dainik Jagran through D.P.R. on 12.06.2013 for filing up various posts in different units of the Corporation. There were 4 posts each of Cook and Helper Cook which were advertised for Snehalaya and the last date for submitting resume along with one passport size photograph, contact number and attested copies of all relevant testimonials was on or before 17.06.2013 up to 2:00 P.M. The claimant-workman had failed to mention that he had even worked from 01.08.2013 to 31.07.2014. The claimant-workman was appointed as Cook for the mess of Snehalaya vide letter No.2117 dated 16.07.2013 for a period of one year and he joined on 01.08.2013. The claimant-workman was offered fresh contract for further period of one year from 02.08.2014 to 01.08.2015 vide letter No.2367 dated 02.08.2014. The claimant-workman was offered fresh contract for further period of one year from 05.08.2015 to 04.08.2016 vide letter No.2436 dated 03.08.2015. The claimant-workman was offered fresh contract for a period of six months from 08.08.2016 to 07.02.2017 vide letter No.2276 dated 05.08.2016 instead of letter No.2277 dated 03.08.2016. The Corporation is simultaneously running Snehalaya - VTC at Maloya and Aashiana at Sector 15, Chandigarh which are Child Care Institutes. It is due to

shifting of children (girls) of Block 'C', Children Home, Snehalaya on administrative grounds, some of the employees including the claimant-workman were transferred to Aashiana vide order No.5234-45 dated 01.02.2017. In fact the management has duly informed the claimant-workman that he would not be offered fresh contract for further period beyond 07.02.2017 as Children (girls) in the age group of 0-18 are residing in Aashiana and a mess has already been running in the said premises, therefore, keeping in view the concern of girl children, there is a requirement of female cook. Accordingly, 1 Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions which is approved in letter of award of contract dated 30.06.2015. The requirement of claimant-workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) residing there and 2 Cooks and 3 Helper Cooks are already working there. There was no need to issue any charge sheet or to hold any inquiry as the services of the claimant-workman was hired on contract basis which is strictly to be adhered by both the parties. The claim of the claimant-workman for continuity of services and back wages had been rejected by the management of the Corporation on administrative grounds. The removal of the workman cannot be termed as arbitrary in nature or violative of Articles 14, 16, & 21 of the Constitution of India. It is admitted that the claimant-workman served the demand notice dated 12.06.2020 served upon the management and the same was defended before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh where no amicable settlement was reached between the parties. Rest of the averments of claim statement are denied as wrong except para No.6 & 8 which are replied being matter of record and prayer is made that the claim of the claimant-workman may be dismissed with cost.

4. The claimant-workman filed rejoinder, wherein the contents of the written statement are denied as wrong except admitted facts of the claim statement and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 08.09.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, the claimant-workman Amritpal Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 17.08.2022 learned representative for the claimant-workman closed the evidence on behalf of the workman.

7. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who tendered her affidavit Exhibit 'MW1/A' along with attested copies of documents i.e. joining letter dated 01.08.2013 bearing diary No.737 date 02.08.2013 *vide* Exhibit 'M1'; declaration of the claimant-workman *vide* Exhibit 'M2'; contract letter Ref. No.2117 dated 16.07.2013 *vide* Exhibit 'M3'; contract letter Ref. No.2367 dated 02.08.2014 *vide* Exhibit 'M4'; contract letter reference No.2436 dated 03.08.2015 *vide* Exhibit 'M5'; contract letter Ref. No.2276 dated 05.08.2016 *vide* Exhibit 'M6'; office order relating to transfer of the staff of Children Home, Snehalaya to Aashiana, Sector 15, Chandigarh bearing Ref. No.5234-5245 dated 01.02.2017 *vide* Exhibit 'M7'; original authority letter issued by the Managing Director of the Corporation in favour of Ms. Rajni Gupta - Company Secretary *vide* Exhibit 'M7' (Exhibit 'M7' is numbered twice, therefore, in order to avoid any ambiguity, the authority letter is hereinafter referred as Exhibit 'M8'). It is pertinent to mention here that documents Exhibit 'M1' to M7' are put in cross-examination to AW1 Amritpal Singh. On 30.09.2022 learned Law Officer closed the evidence on behalf of the management-Corporation.

8. I have heard the arguments of learned representative for the workman and learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue the claimant-workman Amrit Pal Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto.

11. On the other hand, the management-Corporation examined MW1 Rajni Gupta - Company Secretary of the Corporation, who vide her affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement and supported her oral version with documents Exhibit 'M1' to 'M8'.

12. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the claimant-workman applied for the post of Cook as per the advertisement issued by the management-Corporation in newspaper The Tribune (English Edition) and Dainik Jagran (Hindi Edition) both dated 12.06.2013 for various posts including 4 posts of Cook and 4 posts of Helper Cook. The claimant-workman fulfilled the requisite qualification and was appointed on contractual basis initially for a period of one year w.e.f. 16.07.2013 to 15.07.2014 vide contract letter Exhibit 'M3'. The contract was further renewed for a period of one year w.e.f. 02.08.2014 to 01.08.2015 vide contract letter Exhibit 'M4'. The contract was again renewed for a period of one year w.e.f. 05.08.2015 to 04.08.2016 vide contract letter Exhibit 'M5' and lastly the contract was renewed for a period of six months w.e.f. 08.08.2016 to 07.02.2017 vide contract letter Exhibit 'M6'. In this regard MW1 Rajni Gupta in her cross-examination admitted as correct that the recruitment of the contractual employee was made after satisfaction of the Corporation. MW1 admitted as correct that the workman was employed for contractual period of one year. MW1 further admitted as correct that the extension of the contract was given after seeing the performance of the concerned employee / workman.

13. Learned Law Officer for the management-Corporation argued that the last contract Exhibit 'M6' was for a period of six months w.e.f. 08.08.2016 to 07.02.2017 and between every contract there is a break period of two days and therefore, there is no continuity of service of the claimant-workman and the claimant-workman has not completed period of 240 days of his service before his termination and thus, the claimant-workman does not fulfil the requirement of Section 25-F of the ID Act. To my opinion the aforesaid arguments advanced by the learned Law Officer is devoid of merits because the concept of 240 days has been evolved with reference to Section 25-F of the ID Act. The practice at the hands of the management of the Corporation to employ the workman repeatedly after a notional break of two days falls within the ambit and scope of unfair labour practice. Every notional break of 1 or 2 days continued under the same employer w.e.f. 16.07.2013 to 07.02.2017. The notional breaks are to be ignored as the service was under the same employer. The management of the Corporation repeatedly employed the claimant-workman after a notional break only with a view to defeat the rights available to the claimant-workman under Section 25-F of the ID Act.

14. Learned Law Officer argued that the claimant-workman has consciously accepted the terms & conditions of the contracts extended from time to time. The period of six months of last contract Exhibit 'M6' expired on 07.02.2017 and the management due to administrative reasons did not offer to extend the contract period so there is no violation of either any provisions of the ID Act or principles of natural justice. To my opinion, the aforesaid argument advanced by learned Law Officer is devoid of merit because in the present case the services of the claimant-workman was not dispensed simply on account of expiry of the contract period but for the reason that the management intended to recruit and in fact recruited female Cook and female Helper Cook at the place of claimant-workman, who is a male, with the explanation that all the children of Child Care Institute Aashiana are girls and from the point of view of their security and safety only female employees are required. In this regard, MW1 in her cross-examination stated that all the girls were transferred from Children Home, Snehalaya to Children Home, Aashiana, Sector 15 Chandigarh, thus, it was administrative decision in view of the fact that all the residents of Snehalaya are female, therefore, to watch their safety and security only female employees will be deputed. MW1 in her cross-examination further stated that before termination the workman was verbally informed that the contract cannot be renewed in view of the fact that all the residents of Children Home, Aashiana are female. In the present case, there is no allegation against the work & conduct of the claimant-workman. In this regard, MW1 in her cross-examination admitted as correct that when the workman was appointed at that time female children were staying in Children Home, Snehalaya. During service tenure of workman there was no complaint in any manner against his conduct. In any of the

contract letters Exhibit 'M3' to Exhibit 'M6' there is no condition to dispense with the services of the workman if only female children are left in the children home. The management has failed to deny the fact that when the claimant-workman was appointed at Snehalaya, Maloya, Chandigarh, at that time both male and female children were staying in the children home. Even otherwise termination of an employee based on caste, colour, race, gender etc. is illegal.

15. In the written statement in para 7 on merits the management-Corporation has pleaded that accordingly one Helper Cook (female) was engaged through existing service provider i.e. M/s A to Z Services on the same terms & conditions, which is approved in award of letter of contract dated 30.06.2015. The requirement of the workman was no longer required in the Children Home, Snehalaya due to less number of children (boys) and there are two Cooks and three Helper Cooks already working there. The aforesaid plea taken by the management-Corporation is not acceptable because during the period of last contract Exhibit 'M6', the claimant-workman was transferred from Children Home, Snehalaya to Children Home, Aashiana vide office order dated 01.02.2017 / Exhibit 'M7'. It is not the plea of the management-Corporation that there is no requirement of the Cook at Children Home, Aashiana. Rather on account of transfer of girl children from Children Home, Snehalaya to Children Home, Aashiana the strength of the children increased at Children Home, Aashiana. As per the law laid by the **Hon'ble High Court of Punjab & Haryana reported in 2005(7) SLR 626 tilted as Harminder Kaur & Others Versus Union of India & Others** which is applicable to the facts of the present case to an extent, the contract employees cannot be replaced by another contract employee. The contract employee is entitled to continue till regular appointee or by transfer comes to replace him.

16. In view of the discussion made above, the termination of the claimant-workman is illegal and violative to Section 25-F of the ID Act and also amounts to unfair labour practice. Therefore, the claimant-workman is entitled for reinstatement with continuity of service and full back wages and all the consequential benefits thereof.

17. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

18. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.). . .,

The 30th September, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st November, 2022

No. 13/1/9916-HII(2)-2022/17310.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 06/2018, dated 10.10.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

SANDEEP S/O LATE SHRI GYANI RAM, AGED 24 YEARS, RESIDENT OF H. NO. 318 (OLD) 217 (NEW), SHASTRI NAGAR, MANIMAJRA, UT, CHANDIGARH. (Workman)

AND

1. HARYANA SARASWATI HERITANCE DEVELOPMENT BOARD THROUGH ITS CHIEF EXECUTIVE OFFICER, HAVING ITS OFFICE AT HARYANA NEW CIVIL SECRETARIAT, ROOM NO. 607, 6TH FLOOR, SECTOR 17, CHANDIGARH.
2. HARYANA SARASWATI HERITANCE DEVELOPMENT BOARD, THROUGH ITS CHAIRMAN/DEPUTY CHAIRMAN, HAVING ITS OFFICE AT SCO 217, 1ST FLOOR, SECTOR 14, PANCHKULA (HARYANA).
3. OSCAR SHRI PIYOOSH OBERAI, SCO 916, 1ST FLOOR, NAC, MANIMAJRA UT SECURITY AND FIRE SERVICES, CONTRACTOR, THROUGH ITS MANAGING PARTNER CHANDIGARH.(Management)

AWARD

1. The workman, Sandeep, has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman is resident of Chandigarh. The Haryana Saraswati Heritage Development Board (*hereinafter in short referred as 'Board'*) is an undertaking of Haryana Government and the same has been constituted for finding out the existence of ancient holly river Saraswati in the area of Haryana and other nearby states and for this purpose, the mining of the land through machinery and manpower, to pump out the underneath water. The work is in progress to search the whereabouts of Holly River under the supervision of the management No.2. The workman joined the office of management No.1 & 2 on 07.12.2015 as Peon on sanctioned post of Peon at DC rates. No appointment letter was issued. The work of the workman was to serve the official staff with tea, water and to place the office files in order and to pick & deliver the posts / dak of office to other offices and to do all the outside work as desired or directed by the officials of the department of management No.1 & 2. Except the salary paid to the workman, the workman was also provided with petrol expenses for his bike (motorcycle), whenever he used to go outside for official work. An identity card was issued by the Civil Secretariat, Haryana Chandigarh to the workman for entry in the Civil Secretariat since the office of the Chief Executive of the Board is situated in Chandigarh. The Chairman of the Board is Hon'ble Chief Minister of Haryana, having its office at Chandigarh. The first salary was paid to the workman through contractor i.e. management No.3 *vide* cheque bearing No.002817, amounting to ₹ 11,669/-dated 10.02.2016 on the asking of Office Incharge Shri Raj Pal who was working with management No.1 & 2 on deputation from Irrigation Department, Haryana. There is no contract between management No.1 & 2 and management No.3 to provide any manpower to the office of management No.1 & 2. The managements are having no registration / licence from the appropriate Government for engaging the manpower through contractor. The managements have violated the mandate of Contract Labour (Regulation & Abolition) Act, 1971. The management of salary was paid to the workman by the contractor / management No.3, for principal employer i.e. management No.1 & 2 is in violation to the

statute. The management had been indulging in colourable exercise since very beginning. The workman worked with the management No.1 & 2 for about two years and completed his 240 days of service with management No.1 & 2. The workman worked with full devotion and dedication. The work & conduct of the workman was satisfactory and there was nothing adverse against him during his service tenure. The last drawn salary by the workman was ₹ 10,900/- per month. The salary was paid to the workman through bank except the above said cheque payment. On 16.09.2016 when the workman was on duty he was directed by the officials to take along with himself some documents and submit the same in the office of UCO Bank, Sector 8, Panchkula. Since the new Financial Officer had joined therefore his signatures on the documents had to be submitted with the Bank.

2. It is further averred that on 16.09.2016 while on official duty on his bike bearing Registration No. CH-01-AL-3633 towards the bank, the workman met with an accident and resultantly sustained multiple injuries including fracture in his right knee. The officials of management No. 1 & 2 were intimated through mobile phone. The officials namely Shri Ghanshyam Gautam and Shri Shiv Kumar Chaudhary visited the spot of accident and took the workman to Civil Hospital, Sector 6, Panchkula. The family of the workman was informed and the officials of management No.1 & 2 had left the hospital. The workman suffered multiple injuries and fracture in his right leg / knee joint during execution of official duties with the management. The officials of the management No.1 took the workman to Civil Hospital and had not intimated the police and advised the workman not to lodge any DDR / FIR with the police. Even they had not officially recorded the fact of accident suffered by the workman during the execution of official work. The salary up to 16.09.2016 had been paid by the managements which means it implies that the workman had been working in the office up to 5:00 P.M. on the date of accident whereas on said date i.e. 16.09.2016 at 13:45 P.M. the workman had been admitted in Civil Hospital, Panchkula. It was, therefore, not possible that the workman had been present at two different places at same point of time. The management are intentionally concealing the defect in order to escape from their liabilities. At the time of accident, the office of the managements was situated at Academy Bhawan, Sector 14, Panchkula and the employees working in the Academy Bhawan for ready to give evidence to the effect that the accident of the workman has taken place while executing official duty on 16.09.2016. Moreover, the Doctor on duty of Civil Hospital, Panchkula can be summoned as witness by this Tribunal. The workman remained admitted at Civil Hospital, Panchkula from 16.09.2016 to 04.10.2016 with an advice to take treatment from OPD. Accordingly, the workman had taken treatment up to December 2016 in Civil Hospital, Panchkula. Because of the identity card of the Haryana Civil Secretariat, the expenses incurred on MRI and CT Scan had not been charged from the workman by the Hospital Authorities. Later the workman was shifted to his native village and took treatment from Goyal Orthopaedic Centre, HUDA Complex, Gohana Road, Jind, Haryana. The workman was declared fit on 24.04.2017.

3. It is further averred that on 24.04.2017 the workman had given an application seeking permission to re-join the office to the then CEO, who was also PS Health, Haryana but no written reply or response was given to the workman. The workman again approached the managements in May 2017 for joining duty but to his utter surprise the managements had not allowed him to join his duties. The workman continuously approached the managements. A notice was served on 05.06.2017 through Shri Bishan Dass Rana, Advocate but of no use. When no reply to the legal notice was received, the workman filed a demand notice dated 01.11.2017 before the Assistant Labour Commissioner, U.T. Chandigarh against the illegal termination in violation to the provisions of the ID Act. The management appeared before the Assistant Labour Commissioner, U.T. Chandigarh and filed reply to the demand notice wherein the management admitted that the workman was working as Peon in their office. Management No.3 had not filed any reply. Reconciliation was not affected. Therefore, the Assistant Labour Commissioner, Chandigarh passed order dated 26.12.2017 and closed the conciliation proceedings. The services of the workman were terminated in an illegal manner in violation to the provisions of the ID Act. The management No.1 & 2 indulged in unfair labour practice and has been violating the labour laws. The management had not provided the workman the leaves with wages according to the Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1965. The workman is entitled for 14 days sick leave with wages, 7 days casual leave, 15 days earned leave with wages

annually and leave card has not been issued. Some times over time work was taken from the workman but the management had not made payment of over time, which is violation of Minimum Wages Act. The management has not deliberately issued appointment letter and not allowed the workman to mark his presence / attendance by signatures in original and also had not issued any attendance card. No ESI / PF contribution was deducted by the management. The workman was not permitted to join the services on 24.04.2017. The workman was not provided with a single show cause notice and no notice pay was given to him. No retrenchment compensation was paid. The opportunity of hearing was not granted before terminating his services. No memo / charge sheet was issued. No inquiry was conducted. The principle of natural justice had been violated throughout. The service record of the workman is unblemished throughout his service tenure. The services of the workman were terminated in violation to Section 25 of the ID Act. After termination of the services of the workman, the management had kept two fresh persons namely Satish Kumar and Sonu thus Section 25-H of the ID Act is violated. The workman is without any work after termination of his services. The injuries suffered by the workman in an accident have ruined his entire life. The workman is unmarried, young man of 25 years. His marriage prospect has become dark due to the accident. The workman has a widow mother and a younger brother, who are fully dependent upon him. After illegal termination, the workman could not find any job till date. The workman has been forced to sell eatables such as toffees, biscuits, peanuts on the roadside these days, to earn livelihood for self and family. Prayer is made that the termination order be set aside being illegal and the workman may be reinstated with continuity, full back wages and all consequential benefits.

4. On notice, management No.1 & 2 contested the claim statement by filing joint written statement dated 30.05.2018 filed on 04.06.2018. In the written statement preliminary objections are raised on the ground that the management Board was constituted by the Government of Haryana for rejuvenation of Sarasvati River and its heritages vide notification dated 12.10.2015. The office was functioning in Academy Bhawan, IP-16, Sector 14, Panchkula and presently at SCO No.217, First Floor, Sector 14, Panchkula. The present reference is not maintainable before this Court as the appropriate Government in respect of alleged disputed is Government of Haryana. It is well settled principle of law that the workman may raise an industrial dispute regarding his alleged claim application before the authority within whose jurisdiction his place of employment falls. The workman was allegedly working at Panchkula and thus, the claim application could be filed only before the conciliation Officer, Panchkula and appropriate Government for taking cognizance regarding deciding the reference or rejection of such dispute is the Government of Haryana. Still further the jurisdiction to adjudicate the reference would be Labour Court-cum-Industrial Tribunal at Ambala. For setting up the process of new office the workman was taken from service provider M/s Oscar Security & Fire Services, Sector 9, Panchkula that was providing services to the HARTON and he was never appointed by the management. The payment on account of wages was paid by the service provider and the service provider claimed the same from the management. The workman requested the management that the services provider was not paying his wages in time, therefore, the management paid him directly. After considering the difficulties of the workman, the management paid wages from 01.03.2016 onwards at DC rates. The services of the workman was outsourced through service provider. There is no relationship of employer & employee between management and the workman. The reference is accordingly liable to be dismissed. Besides, the workman has not completed 240 days in the preceding year in terms of Section 25-B of the ID Act and the provisions of Section 25-F is not attracted.

5. Further on merits, it is stated that the workman was taken from service provider M/s Oscar Security & Fire Services, Sector 9, Panchkula that was providing services to the HARTON and he was never appointed by the answering management. The payment of account of wages of the workman was paid by the service provider and the service provider claimed the same from the management. The management Board is not having its own staff and the employees are taken through the manpower agencies in terms of outsourcing policy of the State Government. There is no official information available in the office record about the alleged accident. No FIR or any information even after this accident was received in their office. A legal notice was received through Shri Bishan Dass Rana, Advocate and the reply to the notice was sent on 04.08.2017. It is denied to the extent that the management did not file any reply to the demand notice, which was duly submitted before the Assistant Labour Commissioner, U.T. Chandigarh on 18.12.2017. The workman has no direct employer relationship with the management Board. The workman is not a regular employee of the Board and

thus, not entitled for any relief. The workman being not regular employee of the Board was not entitled for any show cause notice, charge sheet or inquiry. The services of the workman were never retrenched nor the workman is entitled for any retrenchment compensation. No appointment letter whatsoever was ever issued by the Board. Moreover, all payment of wages were made to the service provider. Thus, there is no question of violation of Section 25-F of the ID Act. The management Board has not appointed any person in place of the workman as alleged. Thus, there is no violation of Section 25-H of the ID Act. Rest of the averments of the claim statement are denied as wrong except para 1 and 17 which are denied for want of knowledge and para 2 which is admitted being matter of record and prayer is made that the present reference may be dismissed being devoid of merit as well as for want of jurisdiction.

6. Management No.3 contested the claim statement by filing written statement on 21.01.2019 wherein it is stated that it is a matter of record that the management Board was constituted for finding out the existence of ancient holy river Sarasvati in the area of Haryana and other nearby states and for this purpose mining of the land through machinery and manpower, to pumpout the underneath water. It is stated that there being no contract executed between management No.1 & 2 to provide any manpower to them. So it is denied that the management No. 3 has violated the provisions of the Contract Labour (Regulation & Abolition) Act, 1971. The allegations stated against management No.3 are denied. It is admitted that management No.3 had initiated the contract with management No.1 & 2 for a period of one month only but the same could not be able to continue and executed after 28.02.2016. However, during such period the workman has been given salary / wages for the period of one month by management No.3. After the closure of the contract the management No.3 has no knowledge of the claimant, with whom it was working. The claimant has not withdrawn any salary / wages from management No.3. There is no employer-employee relationship between the workman and the management No. 3. The workman has not completed 240 days of his service with management No.3. Management No.3 has no relation with the workman after the period 28.02.2016 nor have information pertaining to his work. The workman was neither been paid through contractor nor its statutory dues and attendance record was maintained by management No.3. The claimant had filed a demand notice before the Assistant Labour Commissioner, U.T. Chandigarh. However, management No.3 cannot be considered as party to the demand notice on the basis of the above stated facts. The order passed by the office of the ALC is a matter of record. The management No.3 appeared before the ALC, Chandigarh but however it has not filed its reply before the authority. Management No.1 & 2 were controlling and supervisory authorities, thus, they are responsible. The services of the workman were terminated by management No.1 & 2 and the termination was made after 28.02.2016. Therefore, management No.3 has not violated Section 25-F of the ID Act. The workman has not completed 240 days of service with the management No.1 & 2, therefore, the management No.3 cannot be held liable of the claim. Rest of the averments of claim statement are denied except para No.16 which is denied for want of knowledge and para 17 which is replied being matter of record. Prayer is made that the claim statement is being false and baseless *qua* management No.3 may be dismissed.

7. The workman filed replication to the joint written statement of management No.1 & 2 filed wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of the claim statement are reiterated. No replication is filed to the written statement of management No.3.

8. From the pleadings of the parties, following issues were framed vide order dated 09.07.2018 :—

1. Whether there is no employer-employee relationship between management No.1 & 2 and workman ? OPM-1 & 2
2. Whether this Court has no territorial jurisdiction to try & adjudicate the industrial dispute ? OPM-1 & 2
3. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
4. Relief.

9. In evidence, the workman, Sandeep, examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W10' and Mark 'A' to Mark 'C'.

Exhibit 'W1' is copy of aadhar card of the workman

Exhibit 'W2' is copy relating to Board wherein it is mentioned that the Haryana Sarasvati Heritage Development Board (HSHDB) with its registered Head Office at Chandigarh / Panchkula has been constituted by the Government of Haryana State vide notification No.1/13-2015-1PP dated 12.10.2015.

Exhibit 'W3' is the copy of entry pass Government of Haryana issued on 05.07.2016 to 05.01.2017.

Exhibit 'W4' is the copy of pass book of Account No.7556000100026286 of account holder Sandeep maintained with Punjab National Bank, Branch, Sector 19, Panchkula, incorporating entries from 04.03.2015 to 11.12.2016.

Exhibit 'W4/A' is copy of the diary containing entries of dates and distance covered in kilometres on conveyance for official purpose, containing entries from 25.12.2015 to 16.09.2016.

Exhibit 'W5' is copy of discharge summary relating to Sandeep of General Hospital, Panchkula bearing admission date 16.09.2016 and discharge date 04.10.2016.

Exhibit 'W6' is copy of the fitness given on 24.04.2017 by the Doctor of Goyal Orthopedic Centre, Gohana Road, Jind.

Exhibit 'W7' is the copy of legal notice dated 05.06.2017 got issued by the workman through Shri Bishan Dass Rana, Advocate to the Chairman-cum-Chief Minister, Haryana, Chandigarh and others

Exhibit 'W8' is the copy of demand notice dated Nil raised by the workman Sandeep.

Exhibit 'W9' is the copy of reply dated 18.12.2017 to demand notice raised by the workman before the Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'W10' is the failure report dated 26.12.2017 made by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

Mark 'A' / Exhibit 'WX' is copy of the cheque number not eligible dated 10.02.2016 for sum of 11,669/- in favour of Sandeep drawn on HDFC Bank.

Mark 'B' is the pay bill relating to Sandeep for the period 10.03.2016 to 30.04.2016.

Mark 'C' is the copy of application dated 26.04.2017 addressed from the workman Sandeep to CEO of the Board.

On 10.09.2017 learned representative for the workman closed the evidence.

10. In additional evidence (application for additional evidence allowed *vide* order dated 11.11.2021). The workman examined AW2 Priya Sharma - Clerk, office of Employees' Compensation Commissioner, Labour Welfare Centre Building, Sector 30-B, Chandigarh, who brought the summoned record and proved into evidence documents i.e. copy of statement of Manish Jain - Accountant, HSHDB, SCO NO.217, First Floor, Sector 14, Panchkula vide Exhibit 'AW2/1'. On 29.11.2021 learned representative for the workman closed the evidence.

11. On the other hand, management No.1 & 2 examined MW1 Bhupinder Kumar Jain - Administrative Officer, HSHDB, Panchkula, who tendered his affidavit Exhibit 'MW1/A'.

12. Management No.3 examined Vijay Kumar - Field Officer in a Proprietorship Firm i.e. M/s Oscar Security & Fire Services as MW1, who tendered his affidavit Exhibit 'MW1/A' (witness MW1 and affidavit Exhibit 'MW1/A' is numbered twice, therefore, in order to avoid any ambiguity the witness Vijay Kumar is re-numbered as MW1 and affidavit tendered by him is renumbered as 'MW2/A').

13. On 08.07.2022 none appeared on behalf of management No.3 thus *vide* order dated 08.07.2022 the management No.3 was proceeded against *ex parte*.

14. On 30.09.2022 learned representative for management No.1 & 2 closed the evidence.

15. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise findings are as below:-

16. The issues are overlapping. Therefore, issue No.2 is taken up first.

Issue No. 2 :

17. Onus to prove this issue is on management No.1 & 2.

18. Learned representative for the management No.1 & 2 raised objection that this Industrial Tribunal / Court has no territorial jurisdiction to decide the present case because the office of the management was functioning at Panchkula. The workman was allegedly working at Panchkula and thus, the claim application could be filed only before the Conciliation Officer, Panchkula and the appropriate Government for taking cognizance regarding deciding the reference or rejection of such dispute is the Government of Haryana. Still further the jurisdiction to adjudicate the reference would be Labour Court-cum-Industrial Tribunal at Ambala.

19. On the other hand, learned representative for the workman argued that as per notification No.1/13-2015-1PP dated 12.10.2015 / Exhibit 'W2' there are many aims and objectives mentioned from Sr. No.1 to 3, as such, Sarasvati Heritage Area as mentioned therein is not limited up to Panchkula only. The Office of Haryana Sarasvati Heritage Development Board is having its branches through out Haryana and the registered head office and the office of Hon'ble Chairman / Chief Executive of the Board is situated in Chandigarh. Moreover, the identity card Exhibit 'W3' was issued to the workman by the Haryana Civil Secretariat at Chandigarh. Thus, the present reference is well within the territorial jurisdiction of the present Court.

20. From the evidence on record, it is proved that management No.2 has taken the workman from service provider M/s Oscar Security & Fire Services, Sector 9, Panchkula that was providing services to the HARTON and he was not appointed by the management. AW1 Sandeep (workman) in his cross-examination conducted by management No.1 & 2 stated that he is having no appointment letter nor the same was issued to him. The payment on account of wages was paid to the workman by the service provider only once i.e. by way of cheque dated 10.02.2016. There is no denial to the fact that the management No. 2 was paying wages to the workman from 01.03.2016 onwards at DC rates. The office of management No.2 situates at Panchkula (Haryana). The workman has no concern with the office of Chief Executive Officer / management No.1. The workman has impleaded management No.1 as a party to attract the territorial jurisdiction of this Court. Thus, the present claim statement is bad for mis-joinder of party / management No.1. The fact that Sarasvati Heritage Area is not limited up to Panchkula only, is no ground to extend the territorial jurisdiction. No doubt the duty of the workman was to pick & deliver the correspondence from its Panchkula office to various other offices including the offices situated at Chandigarh. Learned representative for the workman has misinterpreted document Exhibit 'W3' as identity card of the workman whereas the careful perusal of document Exhibit 'W3' would reveal that it is an entry pass issued to the workman by the Government of Haryana, Haryana Civil Secretariat, Chandigarh for the certain period 05.07.2016 to 05.01.2017. Exhibit 'W3' in no manner can be considered as identity card. The entry pass may be got issued from the concerned office for the purpose of visiting the office. The visitor on the basis of entry pass does not become the employee of the department which he has visited for a limited purpose.

21. In view of the discussion made above, it is proved that for all intents and purposes the workman was temporary employee of management No.2, whose office situates at Panchkula (Haryana). Therefore, the workman would have raised the dispute before the authority within whose jurisdiction his place of employment falls. This Industrial Tribunal has no territorial jurisdiction to adjudicate the present industrial dispute.

22. Accordingly, this issue is decided in favour of management No.1. & 2 and against the workman.

Issue No. 1 & 3 :

23. Both these issues are taken up together in order to avoid repetition of discussion.

Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management / respondent.

24. In view of the findings recorded on issue No.2 above, this Court has no jurisdiction and is not competent to adjudicate whether the services of the workman were terminated illegally by the management and whether there is no employer-employee relationship between management No.1 & 2 and the workman.

25. In view of judgment of **Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996 titled as Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009**, once this Tribunal / Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits.

26. However, the workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

27. Both these issues stand decided accordingly.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 10th October, 2022.

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Harbhajan Singh Ramdasia, S/o Darbara Singh, # 1071, Sector 37-B, Chandigarh, changed my name Harbhajan Singh.

[903-1]

I, P. Parameshwaran, S/o Thandan Periyar, 6055, Maloya Colony, Chandigarh, have changed my name to P Parameshwaran.

[904-1]

I, Sunita, W/o Gian Chand, # 2417, Sector 40-C, Chandigarh, have changed my name to Sunita Devi.

[905-1]

I, Meenu, D/o Gian Chand, # 2417, Sector 40-C, Chandigarh, have changed my name to Meenu Verma.

[906-1]

I, Keshba Nand Joshi, S/o Mukund Ram Joshi, # 2651/1, Sector 44-C, Chandigarh, have changed my name to Keshva Nand Joshi.

[907-1]

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